courts have yielded to the temptation to lay down qualifying rules. When the subject-matter of the contract involves personal taste or judgment, an agreement that it shall be satisfactory to the promisor, it is said, necessarily makes him sole judge whether it answers that condition. *Gibson* v. *Lanage*, 39 Mich. 49. But when the satisfaction stipulated for involves other standards, such as quality, utility, salability, and the like, then, it is said, it is a necessary implication that he must decide as a reasonable man. *Duplex Co.* v. *Garden*, 101 N. Y. 387. However, these rules seem little more than attempts to classify the cases.

Upon principle the test should be the simple one of the actual intention of the parties. This is not to be sought by set rules of interpretation which foster fictions. The rules above recited express, it is true, certain postulates of experience which will guide the triers of fact — the court if the contract be written, the jury if the contract be oral. But to harden these into rules of law will often result in imposing upon one of the parties a liability which neither intended that he should assume. This view, moreover, that it is a problem of fact whether actual or reasonable satisfaction be requisite is well sustained by authority. *Singerly* v. *Thayer*, 108 Pa. St. 291; *Wood Co.* v. *Smith*, 50 Mich. 565. The decision in the principal case that satisfaction there meant personal satisfaction is, indeed, unexceptionable; but that result would seem to be not, as the court holds, a conclusion of law but a conclusion of fact.

LARCENY OF A BUILDING. — From its very nature, larceny of a building must be a rare occurrence. Yet this is what was attempted by the defendant in *Regina* v. *Richards*, noted in the Law Journal, Jan. 14, 1899. Richards tore down an unoccupied building and removed it without the owner's knowledge. He was charged with stealing a house, but larceny of real estate having no place in the common law, the court were compelled to proceed against him under a statute to secure his conviction. Apparently the tearing down and the carrying away were one transaction; if so, the decision and its reason are clearly correct. The house remained realty until it was pulled down, when its materials became chattels. As such they immediately passed into the wrongdoer's dominion; and before their severance it is clear that the owner never had possession of them as personalty. Unless, therefore, between the conversion into personalty and the act of taking away there was an interval during which the chattels passed into the dominion of their owner, there could be no larceny.

What is sufficient to make these two acts distinct and vest the possession where it rightfully belongs may well be a matter of doubt from the cases. Where the wrongdoer has left the chattels in a ditch on the owner's land and returned for them several hours later, never having intended to relinquish his control, it has been held that no larceny was made out. *Regina* v. *Townley*, 12 Cox C. C. 59. Where three days elapsed between the severance and the taking, the defendant was convicted, in spite of the continuance of his felonious state of mind, on the grounds that his control ceased with his physical abandonment, and that continuity of intention is not equivalent to continuity of possession. *Regina* v. *Foley*, 26 L. R. Ir. 299. This case, moreover, was not supposed to overrule *Regina* v. *Townley*, *supra*, and *Regina* v. *Petch*, 14 Cox C. C. 116. It is clear that no one can divest himself of possession of a

chattel without intending so to do. And this intention to abandon, shown by evidence, is what is material, and not mere absence of intention to remain in possession. Had the trespasser carried the chattels to some house and left them there, he would clearly not be guilty if he took them away a few days later. The mere fact, then, that the wrongdoer chose as his place of deposit the owner's own premises must be far from conclusive of the latter's possession. Continuity of intention is clearly in such a case continuity of possession. In the absence of evidence of his intention to abandon, Richards, in the present case, should not have been convicted of stealing even if he had postponed for several days the removal of the fruits of his wrong. And had the facts so appeared, an upper court might have had the opportunity of clearing up this curious antinomy in the law of larceny.

GIFTS OF NON-NEGOTIABLE INSTRUMENTS. — Sixty years ago the case of *Edwards* v. *Jones*, 1 Myl. & Cr. 226, decided, in effect, that one who gave to another a non-negotiable instrument, such as a bond, though a power of attorney to the donee were written upon it, had the legal right to release the obligation represented by the instrument, or to revoke the power of attorney, and that that power was necessarily revoked by his death. The question was treated as an equitable one, in some way connected with gratuitous declarations of trust and the various phases of *Ex parte Pye*, 18 Ves. 140. The case has been supposed to represent the English law to-day. It seems, however, that according to the better view the power of attorney granted would enable the donee to sue on the instrument at law in the name of the donor, that, being written on and inseparable from the document, it was really a power incident to the greater thing, — the document, — so a power coupled with an interest, and so irrevocable. It is true the donor might at any time release the obligation and that release would make the power of attorney valueless, not by revoking it but by annihilating it. The act of releasing would be a direct infringement of the legal right of the donee, a tort; a court of equity might well restrain the donor from committing it, or, if he had committed it, might force him to hold the proceeds of his wrong for the donee. This result, so eminently desirable, has almost always been reached in the American cases, — they have considered the transaction as an "equitable assignment" which is in no way revocable. Most inconsistently, the English courts have come to a like conclusion in regard to such a gift if delivered as a *donatio mortis causa*. Ames, cases on Trusts, page 139 note, page 145 note.

The problem has been raised again in England by the recent case *Re Griffin*, 79 L. T. Rep. 442. A testator gave to his son a non-negotiable banker's receipt, — in effect a certificate of deposit, — indorsed "pay to my son" and signed. After his death the son, who was also his executor, received the deposit from the bank on his own account on presentation of the receipt. A bill was then filed against him by those entitled to the property of the testator for the amount of the deposit. According to the doctrine of *Edwards* v. *Jones* the power was revocable, and, as in the case of *Edwards* v. *Jones*, was revoked by the donor's death. After the death, then, the son held a receipt which he could not be compelled to give up but could not sue upon; the estate of the testator still held the obligation from the bank with power to release it, but